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DEPARTMENT FOR INL/FO AND SA/FO AMB QUINN  
NSC FOR AHARRIMAN/KAMED

E.O. 12958 N/A

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SUBJECT: CN ACTIVITIES IN THE JUSTICE SECTOR

Summary

1. (U) Summary: Justice reform and law enforcement are key components of Embassy Kabul's Counter Narcotics Implementation Plan (CIP). Over the past two months, the DOJ prosecutors (assigned to the Embassy) have made significant progress in establishing legal institutions and reforming laws to ensure narcotics cases can be effectively prosecuted in Afghanistan. The Counter Narcotics (CN) law is currently being reviewed by the Afghan Ministry of Justice (MOJ) and should be forwarded to President Karzai on or around December 12 for his approval. Karzai will likely enact the law, by decree, during the third week of December. The Central Narcotics Tribunal (CNT) has moved into its temporary facility and is operational. The CNT judges petitioned the Supreme Court to transfer 10-12 previously assigned narcotics cases to the CNT, including the Misri Khan case. Similar petitions were filed by the Vertical Prosecution Task Force (VPTF), which continues to review and assign narcotics cases for prosecution. All high-level cases will now be forwarded to the CNT for prosecution. Work continues on the Counter Narcotics Justice Center. The expected completion date is August 2006. End Summary.

Counter Narcotics Law

2. (U) Translation of the Counter Narcotics (CN) law was completed on December 2 and the law was sent to the Afghan Ministry of Justice/Taqnin for its review and approval. After the Taqnin reviews the law, it will be sent to President Karzai and his Cabinet which will convene on December 12. The CN law is likely to be enacted, by decree, during the third week of December.

3. (SBU) While the CN law largely has the support of the international community, including the UK (lead nation on CN), the new law has not been fully endorsed by UNODC and UNAMA. To build consensus, DOJ prosecutors met with members of UNODC and UNAMA to discuss the draft CN law to try and allay their concerns that the law is too complex for the Afghans to implement. UNODC and UNAMA were also concerned that the draft procedural provisions of the CN law would extend to all criminal prosecutions, not just narcotics cases. UNODC and UNAMA also did not support the tougher sentencing provisions, the electronic surveillance features and certain aspects of the law regarding the use of informants. UNODC's trepidation is surprising because many of the law's regulatory features are based on UNODC provisions that exist in other drug laws, and UNODC was consulted throughout the entire drafting process. As a result of DOJ's meetings with the UNODC and UNAMA lawyers, accommodation was reached and the two UN entities are supportive of the law's passage. (NOTE: The agreement reached by UNODC and UNAMA addresses the issues raised in UNVIE VIENNA 00749).

4. (SBU) In addition, to address UNODC and UNAMA's concerns, the Afghans agreed to modify the penalties for second offenses, enhancing subsequent penalties only when the predicate convictions carried at least a five year minimum sentence. UNODC accepted this compromise and agreed that the existing code needed to be strengthened in order to improve GOA's ability to target medium-to-high value targets (MVTs and HVTs) and hence enforce the law more effectively.

Central Narcotics Tribunal

5. (U) The Central Narcotics Tribunal (CNT) relocated to its temporary facilities on November 24. The CNT is operational and has petitioned the Supreme Court to transfer all high-level narcotics cases (there are 10-12 cases in progress) to it from the Kabul Provincial Court. The Supreme Court has not responded to the petition. The Chief of the Appellate Section and the Attorney General have also requested that the Supreme Court transfer the cases to the CNT. On November 30, DOJ prosecutors met with Afghan Chief Prosecutor Fazley to discuss the Misri Khan case to determine how he can help ensure the case's transfer to the CNT.

#### Vertical Prosecution Task Force

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16. (U) The 29 Afghan prosecutors assigned to the Vertical Prosecution Task Force (VPTF) are responsible for investigating and preparing cases for referral to the Central Narcotics Tribunal (CNT). The VPTF is organized into four units: investigative, trial, appellate and Supreme Court. There are also 36 investigators who assist the prosecutors. To date, the VPTF prosecutors have opened more than 140 cases, a small number of which meet the criteria for transfer to the CNT. Recently, VPTF prosecutors petitioned the Supreme Court to transfer all medium to high value target cases to the CNT.

#### Counter Narcotics Justice Center (CNJC)

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17. (U) The Counternarcotics Justice Center, once operational, will house the CNT and the VPTF and a detention facility. The contract for the CNJC has been let and the CNJC is slated for completion in August 2006. The interim VPTF renovation project has solicited bids and information technology project is almost complete.